

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 696

UNITED STATES OF AMERICA, PETITIONER,

VS.

ROBERT PATRICK MORGAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT

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In United States Court of Appeals for the Second Circuit

Cr. No. 28366

UNITED STATES OF AMERICA, Plaintiff-Appellee,

against

ROBERT PATRICK MORGAN, Defendant-Appellant

STATEMENT UNDER RULE 15 (b)

This is an appeal by Robert Patrick Morgan, defendant-appellant, from an order made May 27, 1952, by the Hon. Stephen W. Brennan, District Judge of the United States District Court for the Northern District of New York, denying an application by the defendant-appellant, dated February 11, 1952 for a Common Law Writ of Error Coram Nobis.

The defendant-appellant seeks a Common Law Writ of Error Coram Nobis to vacate and set aside a judgment of conviction entered by Hon. Frederick H. Bryant, District Judge of the United States District Court for the Northern District of New York on December 18, 1939.

A Certificate of Probable Cause and leave to proceed in forma paupers were granted by this Court on October 7, 1952.

1 In United States District Court, Northern District of New York

INDICTMENT

UNITED STATES OF AMERICA,  
Northern District of New York:

In the District Court of the United States within and for the Northern District of New York, at the term thereof held in Utica, New York, in the month of December, in the year of Our Lord, One thousand, Nine hundred and thirty-nine.

PRESENT: HON. FREDERICK H. BRYANT, Judge of said Court.

The Grand Jurors of the United States of America, duly empanelled, sworn and charged to inquire within and for the Northern District of New York, upon their oaths and affirmations do present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, on or about the 6th day of September, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal a certain letter which had been duly and



regularly deposited in the United States Mails by W. W. Allen and addressed to Marjorie Allen at 477 James Street, Syracuse, N. Y., and which letter was at the time in the regular course of transmission in the said United States mails, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 317, Title 18 of the United States Code, and against the peace and dignity of the United States of America.

### COUNT II

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, on or about the 6th day of September, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal and remove out of the letter mentioned in Count I of this indictment, which letter had been duly and regularly deposited in the United States mails by W. W. Allen and addressed to Marjorie Allen at 477 James Street, Syracuse, New York, as aforesaid, and which letter was at the time in the regular course of transmission in the United States mails, Money Order No. 709,830, issued at New York, Church Street Annex, N.Y., for \$25.00, bearing the date of September 5, 1939, remitter W. W. Allen, payee, Marjorie Allen, the said money order not being owned by said defendant and not being money order to which he was entitled, and defendant did steal said money order from said letter before the delivery of said letter to the person to whom it was directed, with intent then and there to defraud, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 317, Title 18, United States Code, and against the peace and dignity of the United States of America.

### COUNT III

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, on or about the 6th day of September, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully, and with intent to defraud, forge the name of Marjorie Allen, the payee named, on the following money order, to wit, No. 709,830, issued at New York City, New York on September 5, 1939 in the sum of twenty-five dollars (\$25.00), W. W. Allen, remitter, and Marjorie Allen, payee, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 347, Title 18, United States Code, and against the peace and dignity of the United States of America.

## COUNT IV

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, on or about the 6th day of September, 1939 at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, with intent to defraud, did wilfully, wrongfully, knowingly, feloniously and unlawfully pass money order No. 709,836, issued at New York, Church Street Annex, N.Y., on September 5, 1939, in the sum of twenty-five dollars (\$25.00), W. W. Allen, remitter, and Marjorie Allen, payee, upon the Syracuse post office, knowing the signature of the payee, Marjorie Allen, to be false, forged and counterfeit, and received therefor the amount stamped upon said money order, to wit, twenty-five dollars (\$25.00), all of which is contrary to the form of the statute in such case made and provided, and particularly Section 347, Title 18, United States Code, and against the peace and dignity of the United States of America.

## COUNT V

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Watertown, State and Northern District of New York and within the jurisdiction of this Court, on or about the 13th day of August, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal a certain letter which had been duly and regularly deposited in the United States mails by the Central New York Power Corporation, Syracuse, N.Y. and addressed to Robert Tift, 121 Bishop Street, Watertown, N. Y., and which letter was at the time in the regular course of transmission in the said United States mails, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 317, Title 18, United States Code, and against the peace and dignity of the United States of America.

## COUNT VI

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Watertown, State and Northern District of New York and within the jurisdiction of this Court, on or about the 13th day of August, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal and remove out of the letter mentioned in Count V of this indictment, which letter had been duly and regularly deposited in the United States mails by the Central New York Power Corporation, Syracuse, N.Y. and addressed to Robert Tift, 121 Bishop Street, Watertown, N.Y.



as aforesaid, and which letter was at the time in the regular course of transmission in the United States mails, check No. 342920, dated August 12, 1939, issued by the Central New York Power Corporation, Syracuse, N.Y., and payable to Robert Tift, in the amount of \$27.03, the said check not being owned by said defendant and not being a check to which he was entitled, and defendant did steal said check from said letter before the delivery of said letter to the person to whom it was directed, with intent then and there to defraud, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 317, Title 18, United States Code, and against the peace and dignity of the United States of America.

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## COUNT VII

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, on or about the 30th day of September, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal a certain letter which had been duly and regularly deposited in the United States mails by the Massachusetts Mutual Life Insurance Company, Springfield, Mass., and addressed to Anne C. Hamlin, 146 McLennan Ave., Syracuse, N.Y., and which letter was at the time in the regular course of transmission in the said United States mails, all of which is contrary to the form of the statute in such case made and provided, and particularly Section 317, Title 18, United States Code, and against the peace and dignity of the United States of America.

## COUNT VIII

And your Grand Jurors aforesaid, upon their oaths and affirmations aforesaid, do further present and indict that ROBERT PATRICK MORGAN, hereinafter called the defendant, at Syracuse, State and Northern District of New York and within the jurisdiction of this Court, on or about the 30th day of September, 1939, did wilfully, wrongfully, knowingly, feloniously and unlawfully steal and remove out of the letter mentioned in Count VII of this indictment, which letter had been duly and regularly deposited in the United States mails by the Massachusetts Mutual Life Insurance Company, Springfield, Mass., and addressed to Anne C. Hamlin, 146 McLennan Ave., Syracuse, N.Y. as aforesaid, and which letter

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was at the time in the regular course of transmission in the United States mails, check No. 244,324, dated October 1, 1939, issued by the Massachusetts Mutual Life Insurance Company, Springfield, Mass., and payable to Anne C. Hamlin, in the amount of

\$87.36, the said check not being owned by said defendant and not being a check to which he was entitled, and defendant did steal said check from said letter before the delivery of said letter to the person to whom it was directed, with intent then and there to defraud, all of which is contrary to the form of the statute in such case made and provided, and particularly section 317, Title 18, United States Code, and against the peace and dignity of the United States of America.

FREDERICK A. HARRINGTON,

*Foreman of the Grand Jury.*

RALPH L. EMMONS,

*United States Attorney in and for the  
Northern District of New York.*

7 In United States District Court

PLEA—December 18, 1939

12/18/39 Deft. arraigned and plead guilty. Sentenced to be confined in the Federal Reformatory at Chillicothe, Ohio for four years (on each of the eight counts of the Indictment), sentences to run concurrently.

[Endorsed:] No. 28366. United States District Court, Northern District of New York. The United States of America vs. Robert Patrick Morgan. Copy. Indictment. Vio: Sections 317 & 347, Title 18, U. S. C. Theft of Letters and Contents; Forging & Passing Money Order (8 counts). A true bill. Frederick A. Harrington, Foreman. Orig. Filed in open Court this 18 day of Dec., A.D. 1939. G. A. Porter, Clerk. Bail, \$—.

8-9 In United States District Court

No. 28366

THE UNITED STATES OF AMERICA

VS.

ROBERT PATRICK MORGAN, DEFENDANT

JUDGMENT—December 18, 1939

The defendant having been indicted and arraigned and pleaded guilty of the offense of unlawfully Stealing certain letters from the United States mails, in violation of Section 317, Title 18 of the United States Code as charged in counts one, five and seven of the Indictment; and of unlawfully stealing and removing the contents



from said letters, with intent to defraud, in violation of Section 317, Title 18 of the United States Code as charged in counts two, six and eight of the Indictment; and of unlawfully forging the name of the payee on the money order removed from letter as mentioned in count two, with intent to defraud said payee, in Violation of Section 347, Title 18 of the United States Code as charged in count three of the Indictment; and of unlawfully passing said money order knowing same to be falsely endorsed, and obtaining the money represented in said money order, in violation of Section 347, Title 18 of the United States Code as charged in the fourth count of said Indictment; the Court now here, on motion of David D. Joselit, Esquire, Assistant United States Attorney, do adjudge and sentence said defendant to be imprisoned in the Federal Reformatory at Chillicothe, Ohio for the term of four years (on each of the eight counts of the Indictment), sentences to run concurrently.

FREDERICK H. BRYANT,  
*United States District Judge.*

DAVID D. JOSELYN,  
*Asst. United States Attorney.*

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In United States District Court

## RETURN ON COMMITMENT

I have executed the within writ in the manner following, to wit: On Dec. 18, 1930, I delivered said Robert Patrick Morgan to the Sheriff of the Oneida Co. Jail temporarily pending transfer to the institution herein designated for the services of sentence.

JAMES JACOB,  
*United States Marshal,*  
By HARRY C. YOUNG,  
*Deputy.*

And on Dec. 28, 1930, I delivered said Robert Patrick Morgan to the Warden of Federal Reformatory at Chillicothe, Ohio together with a copy of this commitment.

JAMES JACOB,  
*United States Marshal,*  
By JOHN H. ROSEN,  
*Deputy.*

11 District Court of the United States of America, Northern  
District of New York

[Title omitted]

SENTENCE—December 18, 1939

The defendant having been indicted and arraigned and pleaded guilty, of the offense of unlawfully stealing certain letters from the United States mails in violation of Section 317, Title 18 of the United States Code as charged in counts one, five and seven of the Indictment; and of unlawfully stealing and removing the contents from said letters, with intent to defraud, in violation of Section 317, Title 18 of the United States Code as charged in counts two, six and eight of the Indictment; and of unlawfully forging the name of the payee on the money order removed from letter as mentioned in count two, with intent to defraud said payee, in violation of Section 347, Title 18 of the United States Code as charged in count three of the Indictment; and of unlawfully passing said money order knowing same to be falsely endorsed, and obtaining the money represented in said money order, in violation of Section 347, Title 18 of the United States Code as charged in the fourth count of said Indictment; the Court now here, on motion of David D. Joselit, Esquire, Assistant United States Attorney, do adjudge and sentence the said defendant to be imprisoned in the Federal Reformatory at Chillicothe, Ohio for the term of four years, (On each of the eight counts of the Indictment), sentences to run concurrently.

Term of imprisonment to begin as above dated.

FREDERICK H. BYRANT,  
*United States District Judge.*

I certify the foregoing to be a true copy of the original judgment, sentence and order of the said Court.

In testimony whereof I have hereunto set my hand and caused the seal of said Court to be affixed this 26 day of December Anno Domini 1939.

G. A. POSTER,  
*Clerk.*



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## In United States District Court

## APPLICATION FOR A WRIT OF ERROR CORAM NOBIS—February 11, 1952

Before me a Notary Public and for the state and County aforesaid, personally appeared Robert Patrick Morgan, who after being duly sworn according to law, deposes and says:

(1) That he is illegally imprisoned and restrained of his liberty in the Attica State Prison at Attica, New York, by virtue of being denied due process of law.

(2) That your Petitioner hereby moves the United States Federal Court, Northern District of New York, for an order to issue out of and under the seal of said Court directing that the judgment of the said Court under the date of December the 18th, 1939, be set aside, rescinded, and expunged from the record; That that sentence of Petitioner be vacated, revoked, voided, and likewise expunged from the record and that your petitioner be ordered returned, after the sentence has been erased, to the Onondaga County Court for resentencing as a first offender as the New York State law subscribes, all of which your Petitioner avers and believes to be a true statement of the facts, based upon every known law and precedent; which said belief is based upon the following grounds:

(3) On December the 18th, 1939, your Petitioner was tried and upon a plea of guilty was sentenced to 4 years in a Federal Reformatory. Your Petitioner begs to state that he was but 19 years of age at the time, had no knowledge of the law, and was without legal aid Council or representation. He was not advised as to his Constitutional rights to the same. In all such cases where one is deprived of his Constitutional rights either thru error or intention the judgment gained in this manner is unconstitutional, unjust and illegal, and when brought to the proper judicial attention, the Petitioner believes, must and should, be set aside.

13 It is contended herein that your Petitioner's conviction was obtained by unfair methods, that rightly or wrongly he served his sentence, that that sentence is still being used against him making him a second offender under New York State law, and your Petitioner maintains that he was denied the right of Counsel as guaranteed by the 5th Article of the Bill of Rights and that the Judgment of December, 1939, should be rendered null and void.

(4) That by reason of the above stated facts and applicable laws cited, also basing his belief upon papers applying to the case sent to him by the clerk of the Court, the fact of your Petitioner's conviction by a plea of guilty does not mitigate or overcome the fact that your Petitioner was denied due process of law.

(5) That when a conviction is obtained by unfair methods and is brought to the notice of the trial Court by a Writ of Error Coram

Nobis it is well established that the Petitioner will be returned to the said trial Court and given every reasonable opportunity to legally establish his claim and in the event of his successful proof of his contentions to order his release from further imprisonment resulting from such conviction.

(6) There has been no previous application for any other type of Writ or other proceedings. There has been no appeal taken in the case now before this Court, neither is such an appeal pending.

Wherefore your Petitioner prays that a Writ of Error Coram Nobis issue and that a hearing be granted at the earliest Motion term of the United States District Court. That your Petitioner be returned without undue delay to appear personally in open Court, to give Testimony and present Evidence in the foregoing Writ of Error Coram Nobis

That your Petitioner's conviction and sentence under indictment #28366 be set aside, vacated, and be declared null and void and he will ever pray.

Respectfully submitted,

ROBERT PATRICK MORGAN,  
*Petitioner-In-Pro-Per,*  
Box #149, Attica, New York.

Subscribed and sworn to before me, on the 11th day of February, 1952.

RICHARD J. BEACHMAN, Sr.,  
*Notary Public,*  
*New York State.*

Residing in Wyoming County No. 13.

Commission expires March 30, 1953.

Notary Public, State of New York, County of Wyoming.

14 In United States District Court

[Title omitted]

AFFIDAVIT OF SERVICE—February 11, 1952

To Whom it may concern:

Please take notice that Robert Patrick Morgan, Defendant-Affiant, above named, has duly served notice upon the District Attorney of the U. S. District Court, Northern District of New York, of Defendant-Affiant's application directed to the U. S. District Court, Northern District of New York for a Writ of Error Coram Nobis.

That the moving papers in the aforesaid proceedings have been duly submitted to the proper prison officials with a request that the said papers be sent via the United States Mail to the proper United States District Court, Northern District of New York Officials;



namely: The United States Federal Judge for the Northern District of New York, The District Attorney for the United States District Court for Northern New York and the District Clerk of the Federal Court, Northern New York on the date below.

Signed, ROBERT PATRICK MORGAN,  
*Defendant-Affiant.*

Subscribed and sworn to before me on the 11th day of February, 1952.

RICHARD J. BEACHMAN, SR.,  
\* *Notary Public, New York State.*

Residing in Wyoming County No. 13.  
Commission expires March 30, 1953.  
Notary Public, State of New York, County of Wyoming.

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In United States District Court

[Title Omitted]

## NOTICE OF MOTION FOR A WRIT OF ERROR CORAM NOBIS

Robert Patrick Morgan, Defendant-Petitioner, above named, being duly sworn according to law deposes and says:

That he will move the United States District Court, Northern District of New York, for an order to issue out of and under the Seal of said Court, on the —th day of —, 1952, directing that Defendant-Petitioner's conviction of the crimes contained in an eight count indictment #28366 and the sentences imposed thereon, under date of December 18th, 1939, be set aside, vacated, voided, revoked and expunged from the record and that the said Defendant-Petitioner, Robert Patrick Morgan, be discharged from further illegal imprisonment resulting from those charges forthwith.

Respectfully submitted,

ROBERT PATRICK MORGAN,  
*Defendant-Petitioner,*  
Box #149, Attica, New York.

Subscribed and sworn to before me on the 11th day of February, 1952.

RICHARD J. BEACHMAN, SR.,  
*Notary Public,*  
State of New York,  
County of Wyoming.

Richard J. Beachman, Sr.  
Notary Public, New York State.  
Residing in Wyoming County No. 13.  
Commission expires March 30, 1953.

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In United States District Court

[Title omitted]

BODY ORDER UNDER PROVISIONS OF SECTION —, CODE OF CRIMINAL  
PROCEDURE

In the name of The United States of America

To: Walter B. Martin, M. D., Warden of Attica State Prison, at  
Attica, New York, and/or his agents:

You are hereby commanded to release and surrender the body of  
Robert Patrick Morgan, Defendant-Petitioner above named, into  
the custody of the Marshal of and for the Northern District of  
New York, or his Deputy, on the —th day of —, 1952, thence to be  
conducted by such Marshal, in such custody, to the Federal District  
Court, at a motion term thereof to be held in the Northern District  
of New York, at — o'clock in the —noon of the —th day of —,  
1952, or as soon thereafter as may be deemed just and proper in the  
premises, to give testimony and present evidence in the above  
entitled action.

Dated —, 1952.

Signed, —, —,

U. S. Federal Judge, Northern District  
of New York.

Witness: —, Clerk of the Federal Court, Northern Dis-  
trict of New York.

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In United States District Court

[Title omitted]

ANSWER—Filed March 10, 1952

The United States of America by EDMUND POET, United States  
Attorney in and for the Northern District of New York, answering  
the petition herein:

1. Admits that on the 18th day of December, 1939, the above  
named defendant was arraigned and pleaded guilty to the offense of  
stealing certain letters from the mails in violation of Section 317,  
Title 18, United States Code and with unlawfully stealing and  
removing the contents of said letters in violation of the same section,  
and of forgery of a money order and uttering the same in violation  
of Section 347, Title 18, United States Code as charged in indictment  
number 28366 and that sentence was imposed by Hon. Frederick H.  
Bryant, deceased, United States District Judge, sentencing the



defendant to be imprisoned in the Federal Reformatory at Chillicothe, Ohio for the term of four years on each count, the sentences to run concurrently.

2. Admits that insofar as the record discloses, the defendant was not represented by counsel on said arraignment and plea.

3. Admits that the defendant has served said sentence and is not at the present time, confined under said judgment of conviction or any judgment of a United States Court.

4. Admits that the defendant is at the present time confined at Attica State Prison at Attica, New York pursuant to a Judgment of a State Court but denies that he has knowledge or information sufficient to form a belief as to any of the allegations contained in the petition herein with reference to the details of said conviction and confinement.

5. Upon information and belief, denies that the sentence and judgment of December 18th, 1939 hereinabove referred to was imposed in violation of the defendant's constitutional rights.

6. That this application is in substance a motion under Section 2255 of Title 28 to vacate the sentence of December 18th, 1939 and as such, the petition upon its face discloses that the petitioner is not entitled to any relief under said section or by virtue of any other provision of any applicable law.

WHEREFORE the respondent, United States of America, prays that the petition herein be dismissed as insufficient on its face.

EDMUND PORT,  
United States Attorney.

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In United States District Court

THE UNITED STATES OF AMERICA,

vs.

ROBERT PATRICK MORGAN

MEMORANDUM-DECISION—May 27, 1952

This proceeding, designated as above, was instituted by mailing to the Clerk a written "application for a writ of error coram nobis". The papers were presented to the Court by the Clerk and have been the subject of consideration and conferences.

The application discloses that the petitioner is now confined in a state penal institution at Attica, New York, by reason of his conviction of a crime in the state court. It appears that on December 18, 1939, the petitioner pleaded guilty to the offense of stealing letters from the United States mail in violation of the then Section 317, Title 18 U.S.C.A. The plea was received by Judge Bryant, now

deceased, in the United States District Court for the Northern District of New York, and petitioner was sentenced to be imprisoned in a federal reformatory for a term of four years. The sentence imposed has been fully served. Sometime thereafter the petitioner was convicted in a state court and was sentenced under the provisions of the Multiple Offenders Law of the State of New York, as a second offender. (N.Y. Penal Law, Section 1941, etc.). The application of the New York State law was based upon the December 22, 1939 conviction, as above mentioned.

The burden of this application is that Morgan was denied his right to counsel; was not advised as to his rights, and did not intelligently waive the assistance of counsel in the matter of his plea to the indictment in this court in 1939. It is contended that by reason thereof the conviction in this court above referred to is void. The United States Attorney has filed an answer to the application, which admits that the court records do not show that petitioner was represented by counsel, but in substance the answer puts the facts in issue and alleges that petitioner is not entitled to relief under the present application.

The Court decided that questions of law and also practical questions were raised, and with the consent of the petitioner, Mr. Jacob Benderson, Attorney at Law, Syracuse, New York, was appointed to represent petitioner in this proceeding. Opportunity was afforded Mr. Benderson to communicate with his client, and the United States Attorney. Attorney Benderson, the United States Attorney and the Court have conferred with the purpose of disposing of the problem with full protection to the petitioner. In the course of such conferences the cases of *United States v. Bradford*, 194 F. 2nd 197, and *United States v. Lavelle*, 194 F. 2nd 202, have been brought to the attention of the Court and counsel.

As in both of the above cases, the Court is bound to examine the question of jurisdiction, and the conclusion is reached that this Court has no jurisdiction of this proceeding.

Although the affidavit submitted is designated as an application for a writ of error coram nobis, it is in fact a motion made ~~23.24~~ under the provisions of Title 28 U.S.C.A. 2255. (See *Revisers Notes*, U. S. v. Sturm, 180 F. 2nd 413). Notice of motion is attached to the application, and copy of the moving papers have been served upon the United States Attorney. A reading of Section 2255, supra, and the decision in *United States v. Lavelle*, supra, makes it clear that this court has no jurisdiction. The Section itself provides a remedy for prisoners in federal custody. Its history and purpose is discussed in *United States v. Hayman*, 342 U. S. 205, and the facts here are so similar to those in *United States v. Lavelle*, supra, as to permit of no distinction.

The decision here does not foreclose the petitioner from all relief.

"Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum."

*United States v. Hayman*, supra, at 219

ORDERED, that the application herein be and the same is in all respects denied.

STEPHEN W. BRENNAN,  
U.S.D.J.

MAY 27, 1952.

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In United States District Court

[Title omitted]

NOTICE OF APPEAL—June 10, 1952

Sirs:

PLEASE TAKE NOTICE that the Petitioner herein hereby appeals to The United States Court of Appeals for the Second Circuit, New York 7, New York from an order, each and every part thereof, of Hon. Stephen W. Brennan, United States District Judge for the Northern District of Utica, New York, denying petitioner-appellant's application for a hearing and determination on a motion to the said Court in the nature of a Common Law Writ of Error Coram Nobis, filed on the 11th day of February 1952 and denied on the 27th day of May 1952.

Yours Truly,

ROBERT PATRICK MORGAN,  
Petitioner-Appellant in Person,

#11423

Box 149,  
Attica, N. Y.

Dated June 10th, 1952.

CC: To Clerk of United States Court of Appeals and United States Attorney, Northern District Court, Utica, N. Y.



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## In United States District Court

AFFIDAVIT IN FORMA PAUPERIS—Filed June 17, 1952

ROBERT PATRICK MORGAN, being duly sworn deposes and says:

This is an application pursuant to section 1915, Title 28, U.S.C., for permission of this Court to get certified copies of the records and Indictment #28366, in the above entitled proceeding as I do not have any money or property and I am a poor person in the strictest sense of the word.

Respectfully Submitted,

ROBERT PATRICK MORGAN,  
*Defendant-Appellant,*

#11423

Box 149,

Attica, N. Y.

Sworn to before me this 10th day of June, 1952.

Richard J. Beachman, Sr., Notary Public, State of New York,  
County of Wyoming. Commission expires March 30, 1953.

27 United States District Court, Northern District of New York  
Chambers of Judge Stephen W. Brennan  
Utica 1, New York

June 17, 1952

Hon. Glen A. Porter, Clerk  
United States District Court  
Federal Building  
Utica, New York

Re: *U. S. v. Robert P. Morgan*

Dear Sir:

You have handed to me a letter signed by Mr. Morgan, dated June 10, 1952, with enclosures which seem to be addressed to the United States District Court.

If I understand the letter correctly, it is apparent that Mr. Morgan desires that you file one notice of appeal in your office and forward the other to the United States Attorney. The purpose of the enclosure consisting of an affidavit by Mr. Morgan is not entirely clear and, of course, it does not comply with the requirements of Title 28 U.S.C.A. 1915. I would assume, however, that Mr. Morgan desires that certified copies of the record in this proceeding and of Indictment 28366 be made available to the Circuit Court of Appeals, if certification is required by that court. It is apparent that Mr.

Morgan has no funds, and such papers should be furnished without charge if same are necessary to consummate the appeal.

I suggest that you enclose a copy of this letter to Mr. Morgan, and no doubt you will be advised by the Circuit Court of Appeals as to just what papers are necessary for use in that court.

Very truly yours,

S. W. BRENNAN,  
U.S.D.J.

SWB:C.

In United States District Court

[Title omitted]

NOTICE OF APPEAL

Sirs:

PLEASE TAKE NOTICE that the above named petitioner, Robert Patrick Morgan, appeals to the United States Court of Appeals, Second Circuit, from an order made February 11, 1952, denied May 27, 1952 and filed May 29, 1952, denying an application for a hearing and determination on a motion to the said Court in the nature of a Common Law Writ of Error Coram Nobis, and the petitioner appeals from the whole of said order, as well as from each and every part thereof, by virtue of a Certificate of Probable Cause, duly signed and issued by the United States Court of Appeals, Second Circuit, dated October 7, 1952, Chief Justice Thomas W. Swan.

Dated: October 24, 1952.

Yours, etc.

JACOB ABRAMS,  
Attorney for Defendant-Petitioner,  
Office & P. O. Address, 30 Broad Street, 24th Floor,  
Borough of Manhattan, City of New York.

To: Clerk of the Court, United States Attorney, Northern District Court, Utica, N. Y.

Clerk's Certificate to foregoing transcript omitted in printing.

30 United States Court of Appeals for the Second Circuit,  
October Term, 1952

Nos. 155-156

Docket Nos. 22560-22561

UNITED STATES OF AMERICA, Plaintiff-Appellee,  
against

ROBERT PATRICK MORGAN, Defendant-Appellant

UNITED STATES ex rel. ROBERT PATRICK MORGAN, Relator-Appellant,  
against

WALTER B. MARTIN, as Warden of Attica Prison, Attica, N. Y.,  
Respondent-Appellee

OPINION—February 5, 1953

Before: AUGUSTUS N. HAND, CHASE and FRANK, Circuit Judges  
Appeal from the United States District Court for the Northern  
District of New York, Stephen W. Brennan, Judge, and from  
31 the United States District Court for the Western District of  
New York, John Knight, Judge.

The denial by Judge Brennan in *United States v. Morgan* of the  
application for a writ of error *coram nobis* is reversed.

The appeal in *United States ex rel. Morgan v. Martin* from Judge  
Knight's denial of a writ of habeas corpus is dismissed.

JACOB ABRAMS, Attorney for defendant-appellant, relator-appel-  
lant; Jacob Abrams and Florence Kelley—Legal Aid Society,  
counsel;

EDMUND PORT, United States Attorney, for plaintiff-appellee.

NATHANIEL L. GOLDSTEIN, Attorney General of the State of New  
York, by Vincent A. Marsicano, Assistant Attorney General, for  
respondent-appellee.

AUGUSTUS N. HAND, Circuit Judge:

In 1939 Robert Morgan pleaded guilty and was sentenced in the  
Northern District of New York to four years imprisonment on each  
of eight counts in an indictment involving the theft of three letters  
from the United States mail. He served the time under these  
sentences, which ran concurrently. In 1950 he was convicted in the  
County Court of Onondaga County, New York, and was sentenced  
as a second offender to serve from seven to ten years. New York  
Penal Law § 1941. He is currently confined in Attica Prison, Attica,



New York, pursuant to that sentence. On February 11, 1952, application was made to the District Court for the Northern District of New York for a common law writ of error *coram nobis*, seeking an order vacating and setting aside his conviction in that court on the ground that he was not given the assistance of counsel and did not waive his constitutional right to such assistance. If his federal conviction were set aside he would presumably be entitled to be resentenced in the New York court as a first offender. Following the denial by Judge Brennan of the application for a writ of error *coram nobis*, Morgan sought a writ of habeas corpus in the Western District of New York, the district in which he is confined. 28 U. S. C. § 2241 *et seq.* The grounds are stated in his brief to have been the same as those upon which the application for the writ of error *coram nobis* was based, but the petition is not included in the record nor was it filed in the district court. The application was denied by Judge Knight.

The appeals from the decisions of Judge Knight and Judge Brennan have been argued together. Judge Brennan denied the application for a writ of *coram nobis* on the ground that it was to be treated as a motion under 28 U.S.C. § 2255 which could not be made because Morgan was no longer in federal custody. *United States v. Bradford*, 2d Cir., 194 F. 2d 197, cert. denied 343 U. S. 979; *United States v. Lavelle*, 2d Cir., 194 F. 2d 202. However, in denying the petition for a reargument in *United States v. Bradford*, *supra*, this court left open the question whether a motion outside the rules might not be available to a prisoner serving a state sentence as a second offender who sought to establish that his first conviction in a federal court was void, as Morgan does here. Although *United States v. Lavelle*, *supra*, apparently involved such a situation, the question of whether a writ of error *coram nobis* could issue does not seem to have been raised.

In *United States v. Mayer*, 235 U. S. 55, 69, the Supreme Court declined to pass on whether the federal courts possessed the jurisdiction to correct errors at subsequent terms as was done at common law through writs of error *coram nobis*. Cf. *United States v. Smith*, 331 U. S. 469, 475, N. 4. But several circuits have held that such a power exists. *United States v. Stasse*, 3rd Cir., 144 F. 2d 439, 442; *Robinson v. Johnston*, 9th Cir., 118 F. 2d 998, judgment vacated and cause remanded 316 U. S. 649, reversed on other grounds, 130 F. 2d 202; *Roberts v. United States*, 4th Cir., 158 F. 2d 150; cf. *Tinkoff v. United States*, 7th Cir., 129 F. 2d 21; *Farnsworth v. United States*, D. C. Cir., 198 F. 2d 60, cert. denied Jan. 5, 1953.

It is argued that 28 U. S. C. § 2255 superseded all other remedies which could be invoked in the nature of the common law writ of error *coram nobis*. While the Reviser's Note to the enactment of

Section 2255 says that: "This section restates, clarifies and simplifies the procedure in the nature of the ancient writ of error coram nobis," the Supreme Court in interpreting § 2255 stated that it was passed "to meet practical difficulties that had arisen in administering the habeas corpus jurisdiction of the federal courts." *United States v. Hayman*, 342 U. S. 205, 219. The difficulties referred to were the burden involved in considering the numerous applications for writs of habeas corpus that were filed in the districts where federal prisons were located, and the inherent problem of dealing with petitions when the records and government officials involved were located at distant points. In view of the Congressional purpose in enacting § 2255 we can see no reason for construing it in such a way as to deprive a prisoner of remedies that were before open to him, and which would avoid the above difficulties in situations not covered by § 2255. If Morgan can establish that he was deprived of his common law right to be represented by counsel at the trial in the Northern District and he in no way waived that right, there would be a proper case for allowing a writ of error coram nobis, since such a denial is an error of fundamental character rendering the trial invalid. See *United States v. Mayer*, 235 U. S. 55, 69. Judge Brennan's order dismissing his application should accordingly be reversed.

The government concedes that Morgan's contention that he was without the assistance of counsel is supported by the record. Whether he in fact was represented by counsel or whether he can sustain his burden of showing that he did not intelligently waive this right can only be determined in a hearing. See *Johnson v. Zerbst*, 304 U. S. 458, 468-9. That hearing may be had upon affidavits or other evidentiary matter submitted on behalf of Morgan and of the government and would not necessarily require that he be brought to the Northern District to testify orally. But unless the affidavits clearly show that Morgan's contention is without foundation, he should be present at the hearing and be permitted to testify. See *Walker v. Johnston*, 312 U. S. 275, 284; *United States v. Hayman*, 342 U. S. 205, 222-3; cf. *Barber v. United States*, 4th Cir., 142 F. 2d 805, cert. denied 322 U. S. 741. Accordingly, the case is remanded for a hearing.

In respect to the decision of Judge Knight that Morgan could not seek a writ of habeas corpus because he had not exhausted his state remedies, we think the view that the judge expressed was incorrect since there was no available state remedy by which Morgan could challenge the validity of his federal conviction. *People v. McCullough*, 300 N. Y. 101. Morgan's unsuccessful attempt to obtain a writ of *coram nobis* in the State Court where he was sentenced exemplifies this New York rule. But since he has an available remedy through a writ of *coram nobis* in the United States District

Court for the Northern District, we can see no reason for discussing whether he might also avail himself of a writ of habeas corpus in the Western District. *Cf. United States ex rel. Turpin v. 33 Bogard, 2nd Cir., 189 F. 2d 742.* Moreover, we have nothing before us but a letter from Judge Knight to Morgan indicating a return of his application, whatever it may have been, with a statement that he had not exhausted his state remedies. We have been furnished with no record for the appeal on which we may properly act.

Accordingly, the appeal from Judge Knight's action is dismissed.

36-37 United States Court of Appeals for the Second Circuit

UNITED STATES, Plaintiff-Appellee,

v.

ROBERT PATRICK MORGAN, Defendant-Appellant

JUDGMENT—February 5, 1953

Appeal from the United States District Court for the Northern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Northern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and cause remanded for further proceedings in accordance with the opinion of this court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

ALEXANDER M. BELL,  
Clerk.

38 Clerk's Certificate to foregoing transcript omitted in printing.



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## SUPREME COURT OF THE UNITED STATES

[Title omitted]

## ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including April 6th, 1953.

ROBERT H. JACKSON,  
*Associate Justice of the Supreme  
Court of the United States.*

Dated this 5th day of March, 1953.



## Supreme Court of the United States

No. 693, October Term, 1963

UNITED STATES OF AMERICA, PETITIONER

vs.

ROBERT PATRICK MORGAN

*Order allowing certiorari*

Filed June 8, 1963

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.